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11 **UNITED STATES DISTRICT COURT**

12 **DISTRICT OF NEVADA**

13 UNITED STATES OF AMERICA,

14 Case No. 2:23-mj-00371-NJK

15 Plaintiff,

16 **Stipulation to Extend Deadlines to**
17 **Conduct Preliminary Hearing and**
18 **File Indictment**

19 OMAR ESPITIA-MARQUEZ,

20 (Third Request)

21 Defendant.

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23 IT IS HEREBY STIPULATED AND AGREED, by and between Jason M. Frierson,
24 United States Attorney, and Kimberly Frayn, Assistant United States Attorney, counsel for the
25 United States of America, and Rene L. Valladares, Federal Public Defender, and Raquel
26 Lazo, Assistant Federal Public Defender, counsel for Omar Espitia-Marquez, that the that the
Court schedule the preliminary hearing in this case on a date convenient to the Court but no
sooner than November 1, 2023. This request requires that the Court extend two deadlines: (1)
that a preliminary hearing be conducted within 14 days of a detained defendant's initial
appearance, see Fed. R. Crim. P. 5.1(c); and (2) that an information or indictment be filed
within 30 days of a defendant's arrest, see 18 U.S.C. § 3161(b).

This Stipulation is entered into for the following reasons:

1. The United States Attorney's Office has developed an early disposition program for immigration cases, authorized by the Attorney General pursuant to the PROTECT ACT of 2003, Pub. L. 108-21.

2. The early disposition program for immigration cases is designed to: (1) reduce the number of hearings required in order to dispose of a criminal case; (2) avoid having more cases added to the court's trial calendar, while still discharging the government's duty to prosecute federal crimes; (3) reduce the amount of time between complaint and sentencing; and (4) avoid adding significant time to the grand jury calendar to seek indictments in immigration cases, which in turn reduces court costs.

3. The government has made a plea offer in this case that requires defendant to waive specific rights and hearings in exchange for “fast-track” downward departure under USSG § 5K3.1. The defendant has accepted the plea offer and has entered into a written plea agreement with the government. Waiver of Indictment, Plea, and Sentencing is currently set for September 21, 2023, at 9:00 a.m., before Judge Andrew P. Gordon but will be continued to November 1, 2023 at 11:00 a.m. After final disposition in this matter has concluded at the scheduled hearing, the preliminary hearing will be automatically vacated.

4. Defendant is incarcerated and does not object to a continuance.

5. Under Federal Rule of Criminal Procedure 5.1(c), the Court “must hold the preliminary hearing within a reasonable time, but no later than 14 days after the initial appearance if the defendant is in custody . . .”

6. However, under Rule 5.1(d), “[w]ith the defendant’s consent and upon a showing of good cause—taking into account the public interest in the prompt disposition of criminal cases—a magistrate judge may extend the time limits in Rule 5.1(c) one or more times . . .”

7. Furthermore, under the Speedy Trial Act, 18 U.S.C. § 3161(b), “[a]ny information or indictment charging an individual with the commission of an offense shall be filed within thirty days from the date on which such individual was arrested or served with a summons in connection with such charges.”

8. If the Court does not accept the defendant's guilty plea, then the government and the defendant will need additional time to prepare for the Preliminary Hearing.

9. Accordingly, the parties jointly request that the Court schedule the preliminary hearing in this case no sooner than November 1, 2023.

10. Defendant is in custody and agrees to the extension of the 14-day deadline imposed by Rule 5.1(c) and waives any right to remedies under Rule 5.1(c) or 18 U.S.C. § 3161(b), provided that the information or indictment is filed on or before the date ordered pursuant to this stipulation.

11. The parties agree to the extension of that deadline.

12. This extension supports the public interest in the prompt disposition of criminal cases by permitting defendant to consider entering into a plea agreement under the United States Attorney's Office's fast-track program for § 1326 defendants.

13. Accordingly, the additional time requested by this stipulation is allowed under Federal Rule of Criminal Procedure 5.1(d).

14. In addition, the parties stipulate and agree that the time between today and the scheduled preliminary hearing is excludable in computing the time within which the defendant must be indicted and the trial herein must commence pursuant to the Speedy Trial Act, 18 U.S.C. § 3161(b) and (h)(7)(A), considering the factors under 18 U.S.C. § 3161(h)(7)(B)(i) and (iv).

This is the third request for an extension of the deadlines by which to conduct the preliminary hearing and to file an indictment.

1 DATED this 13th day of September, 2023.
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Respectfully submitted,

RENE L. VALLADARES
Federal Public Defender

JASON M. FRIERSON
United States Attorney

5 By: Raquel Lazo

6 RAQUEL LAZO
7 Assistant Federal Public Defender

By: Kimberly Frayn

KIMBERLY FRAYN
Assistant United States Attorney

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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,
Plaintiff,
v.
OMAR ESPITIA-MARQUEZ,
Defendant.

Case No. 2:23-mj-00371-NJK

**Order on Stipulation
to Extend Deadlines to Conduct
Preliminary Hearing and
File Indictment**

Based on the stipulation of counsel, good cause appearing, and the best interest of justice being served; the time requested by this stipulation being excludable in computing the time within which the defendant must be indicted and the trial herein must commence pursuant to the Speedy Trial Act, 18 U.S.C. § 3161(b) and (h)(7)(A), and Federal Rule of Criminal Procedure 5.1, considering the factors under 18 U.S.C. § 3161(h)(7)(B)(i) and (iv):

IT IS THEREFORE ORDERED that the preliminary hearing currently scheduled on September 28, 2023 at the hour of 4:00 p.m. be vacated and continued to

November 2, 2023 at the hour of 4:00 p.m. .

DATED this 14th day of September, 2023.

UNITED STATES MAGISTRATE JUDGE